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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,343	10/23/2001	Wade C. Patterson	00-0895-18/US	6460

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EXAMINER

KEASEL, ERIC S

ART UNIT

PAPER NUMBER

3754

DATE MAILED: 06/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/037,343

Applicant(s)

PATTERSON ET AL.

Examiner

Eric Keasel

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 1-12 and 20-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-18 is/are rejected.
- 7) ☒ Claim(s) 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 27FEB.20+25NOV2002.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Nonpublication Request***

1. Applicant's nonpublication request under 35 USC 122 (certifying that the invention disclosed in the application has not and will not be the subject of an application filed in another country, or under a multilateral agreement, that requires publication at eighteen months from filing) is acknowledged. However, the invention disclosed in this application is the subject of WO 2002/061955, EP 1330882, and AU 2002249880 and there is no notification of the foreign (or multilateral) filings nor is there a rescission of the nonpublication request in the file.

Accordingly the application will be held abandoned (see 35 USC 122(b)(2)(B)(iii)) unless applicant can produce proof of the notification of foreign filing within 45 days of the filing of the foreign applications. If applicant can not provide such proof, applicant should file a petition under 37 CFR 1.137(b)/(f).

### ***Election/Restrictions***

2. Applicant's election of Group IV in the paper filed 19 March 2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

3. Claims 1-12 and 20-28 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Election was made **without** traverse in the paper filed 19 March 2004.

*Specification*

4. The use of the trademarks MICROSOFT and MOTOROLA have been noted in this application. Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner, which might adversely affect their validity as trademarks (see MPEP 608.01(v)).

*Claim Rejections - 35 USC § 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 13-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Houck (US Patent Number 5,603,287).

Houck discloses an apparatus (10) for automatic control of fluid flow (through nozzle 28) when an object is in proximity with the apparatus and for communicating with a communication device, the apparatus comprising: a transmitter (22) for transmitting a detection signal (the motion detector) and a communication signal (the signal going to the cat to verify that it should not sprayed); a receiver (16) for receiving a reflected detection signal; and logic configured to control fluid flow based upon the reflected detection signal; wherein each of the signals is an infrared signal; and wherein the detection signal is a sequence of pulses.

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7. Claims 13 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Hamanaka et al. (US Patent Number 5,758,688).

Hamanaka et al. disclose an apparatus for automatic control of fluid flow when an object is in proximity with the apparatus and for communicating with a communication device, the apparatus comprising: a transmitter (160, 161) for transmitting a detection signal and a communication signal; a receiver (162) for receiving a reflected detection signal; and logic configured to control fluid flow based upon the reflected detection signal; and wherein the logic is configured to include, in said communication signal, information indicative of an operational state of the apparatus (i.e. the low battery LED 161 indicates the operational state).

8. Claims 13, 14, 17, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Kunkel (US Patent Number 5,281,808).

Kunkel discloses an apparatus for automatic control of fluid flow when an object is in proximity with the apparatus and for communicating with a communication device, the apparatus comprising: a transmitter (3) for transmitting a detection signal (to 4) and a communication signal (to 5); a receiver (4) for receiving a reflected detection signal; and logic configured to control fluid flow based upon the reflected detection signal; wherein each of the signals is an infrared signal; wherein the transmitter comprises a single emitter; and wherein the logic is configured to exclude simultaneous transmission of the detection signal and the communication signal.

***Allowable Subject Matter***

9. Claim 19 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. The following is a statement of reasons for the indication of allowable subject matter:

Although there are numerous prior art references that anticipate independent claim 13 and other dependent claims, and many of those references have multiple infrared detectors, the prior art of record does not disclose or suggest, in combination with the other recited limitations of claims 13 and 19, the receiver having a first infrared detector with a hole and the apparatus further comprising another infrared detector such that an infrared signal may pass through the hole of the first infrared detector and be received by the other infrared detector

***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Keasel whose telephone number is (703) 308-6260. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Mancene can be reached on (703) 308-2696. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Eric Keasel 26 MAY 04*  
Eric Keasel  
Examiner  
Art Unit 3754